

Ontario Court Weighs In On Franchise Disclosure and Rescission

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In a recent decision, *Giroux v. 1073355 Ontario Limited o/a Schooley Mitchell Telecom Consultants*,¹ the Ontario Superior Court of Justice granted summary judgment to a franchisee seeking statutory rescission of its franchise agreement under Ontario's *Arthur Wishart Act (Franchise Disclosure), 2000* (the Wishart Act). Although the decision is fairly straightforward, as rescission was granted due to the failure of the franchisor to provide financial statements prepared in accordance with generally accepted accounting principles (GAAP), the decision did provide some helpful guidance on various rescission-related legal issues in Ontario.

The issues addressed in the decision are as follows:

- If a defendant franchisor intends on arguing that its financial statements were prepared in accordance with GAAP, the franchisor should provide evidence as to the accounting standard that was used to compile the financial statements.
- The delivery of a second disclosure document to correct issues with an initial disclosure document does not necessarily contravene section 5 of the Wishart Act and its requirement to provide one disclosure document at one time.
- Ontario courts will take a critical view of what constitutes a “material fact” for the purposes of rescission claims. In this case, the court held that information on financing arrangements, the failure to identify an individual as a “franchisor’s associate,” the existence of a 1998 Provincial Offences Act charge against the franchisor’s associate, and the ownership history of the franchisor system were not material facts and did not have to be disclosed by the franchisor.

The *Schooley Mitchell* case is a reminder to franchisors of their obligations to provide current and adequate financial disclosure to prospective franchisees, but also a helpful guide to what constitutes material information for the purposes of franchise disclosure.

¹ *Giroux et al. v. 1073355 Ont. Ltd. et al*, 2018 ONSC 143, <<http://canlii.ca/t/hplh5>> (*Schooley Mitchell*)